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5 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 JOSEPH M. SPARKS,

8 Plaintiff,

9 v.

10 STATE OF WASHINGTON, et al.,

11 Defendants.

Case No. C08-5600BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

12 This matter comes before the Court on the Report and Recommendation of the  
13 Honorable J. Kelley Arnold, United States Magistrate Judge (Dkt. 10). The Court having  
14 considered the Report and Recommendation, Plaintiff's failure to file objections, and the  
15 remaining record, does hereby find and order:

- 16 (1) The Court adopts the Report and Recommendation; and  
17 (2) Plaintiff's civil rights complaint (Dkt. 9) is **DISMISSED WITHOUT**  
18 **PREJUDICE**. While it is difficult for the Court to understand the intent of  
19 Plaintiff's complaint, it appears Plaintiff seeks to challenge the fact of his  
20 incarceration. Plaintiff should refer to his former habeas petition and its  
21 attendant state exhaustion requirement. (*Sparks v. Unknown*, C08-5484RJB/  
22 JKA, Dkt. # 7).

23 DATED this 23<sup>rd</sup> day of January, 2009.

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26 BENJAMIN H. SETTLE  
27 United States District Judge

28 ORDER